

ORIGINAL

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December 28, 2004

212883

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**VIA FEDERAL EXPRESS**

Mr. Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 700  
Washington, DC 20006



Re: **Finance Docket No. 34646**  
**Sioux Valley Regional Railroad Authority – Trackage Rights**  
**Exemption – Lines of the State of South Dakota**


Dear Secretary Williams:

Enclosed for filing in the above-captioned proceeding are an original and ten copies of the **Verified Notice of Exemption of Sioux Valley Regional Railroad Authority Pursuant to 49 C.F.R. § 1150.31**, dated December 15, 2004. A check in the amount of \$1,500, representing the appropriate fee for this filing, is attached.

One extra copy of the Notice and this letter also are enclosed. I would request that you date-stamp those items to show receipt of this filing and return them to me in the provided envelope.

If you have any questions regarding this filing, please feel free to contact me. Thank you for your assistance on this matter.

Respectfully submitted,

  
Myles L. Tobin

MLT: arw

Enclosures

cc: Adrian L. Steel, Jr.

ENTERED  
Office of Proceedings  
DEC 29 2004  
Part of  
Public Record

ORIGINAL

BEFORE THE  
SURFACE TRANSPORTATION BOARD

212883

FINANCE DOCKET NO. 34646

SIOUX VALLEY REGIONAL RAILROAD AUTHORITY  
-- TRACKAGE RIGHTS EXEMPTION --  
LINES OF THE STATE OF SOUTH DAKOTA

**VERIFIED NOTICE OF EXEMPTION  
OF  
SIOUX VALLEY REGIONAL RAILROAD AUTHORITY  
PURSUANT TO 49 C.F.R. § 1150.31**

**FILED**

DEC 20 2004

TRANSPORTATION BOARD

**ENTERED  
Office of Proceedings**

DEC 20 2004

**Part of  
Public Record**

Mr. Russell Hazel  
c/o Sioux River Ethanol  
29619 Spur Avenue  
Hudson, South Dakota 57034  
(605) 984-2222

**CHAIRMAN  
SIOUX VALLEY REGIONAL  
RAILROAD AUTHORITY**

Dated: December 15, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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FINANCE DOCKET NO. 34646

SIoux VALLEY REGIONAL RAILROAD AUTHORITY  
-- TRACKAGE RIGHTS EXEMPTION --  
LINES OF THE STATE OF SOUTH DAKOTA

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**VERIFIED NOTICE OF EXEMPTION  
OF  
SIoux VALLEY REGIONAL RAILROAD AUTHORITY  
PURSUANT TO 49 C.F.R. § 1150.31**

Pursuant to 49 C.F.R. § 1150.31, *et seq.*, Sioux Valley Regional Railroad Authority ("Sioux Valley"), a non-carrier, hereby files this Verified Notice of Exemption for the acquisition of overhead trackage rights over a line of railroad owned by the State of South Dakota between Elk Point, South Dakota (also known as East Wye Jct.) and Sioux City, Iowa, a total distance of approximately 21.5 miles ("the Elk Point-Sioux City Line"). Based on projected revenues for the Elk Point-Sioux City Line, no party will exceed Class III revenue ceilings as a result of the transaction contemplated herein.

This Notice is related to Finance Docket No. 34646 (Sub-No. 1), D&I Railroad Company -- Trackage Rights Exemption -- State of South Dakota and Sioux Valley Regional Railroad Authority, in which the D&I Railroad Company is filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(7) to operate the Elk Point-Sioux City Line trackage rights on behalf of Sioux Valley.

Further, the trackage rights acquired in connection with this Notice encompass a portion of the line of railroad which is the subject of the Notice of Exemption filed in Finance

Docket No. 34645, The Burlington Northern and Santa Fe Railway Company – Acquisition and Operation Exemption – State of South Dakota.

In accordance with the requirements of 49 C.F.R. § 1150.33, Sioux Valley submits the following information:

**Name and Address of Applicant: 49 C.F.R. § 1150.33(a)**

The full name and address of the non-carrier applicant herein is as follows:

Sioux Valley Regional Railroad Authority  
P.O. Box 511  
Beresford, South Dakota 57004

**Applicant's Representative: 49 C.F.R. § 1150.33(b)**

Sioux Valley's representative to whom correspondence regarding this transaction should be sent is as follows:

Mr. Russell Hazel  
c/o Sioux River Ethanol  
29619 Spur Avenue  
Hudson, South Dakota 57030

**Statement Concerning Agreement: 49 C.F.R. § 1150.33(c)**

Sioux Valley has negotiated an agreement with the State of South Dakota providing for Sioux Valley's acquisition of trackage rights on the Elk Point-Sioux City Line. Sioux Valley anticipates that the Agreement will be executed within the next several days.

**Operation of the Property: 49 C.F.R. § 1150.33(d)**

Sioux Valley will utilize a third-party rail carrier to operate the trackage rights on behalf of Sioux Valley pursuant to a separate Notice of Exemption being filed concurrently herewith in Finance Docket No. 34646 (Sub-No. 1). The third-party operator will be the D&I Railroad Company, which operates adjoining rail lines on behalf of Sioux Valley.

**Summary of the Transaction: 49 C.F.R. § 1150.33(e)**

Sioux Valley is a non-carrier which leases previously abandoned lines between Canton and Elk Point, South Dakota and between Beresford and Hawarden, South Dakota, now owned by the State of South Dakota. The Canton-Elk Point and Beresford-Hawarden lines are subleased and operated by the D&I Railroad Company.

The State of South Dakota owns various rail lines in the state which are either leased to regional railroad authorities for operation by third-party rail carriers or, alternatively, are directly operated by third-party rail carriers on behalf of the State. The Elk Point-Sioux City Line is operated on behalf of the State by The Burlington Northern and Santa Fe Railway Company ("BNSF"), pursuant to an Operating Agreement dated July 10, 1986. Under the Operating Agreement the State retains ownership of the Elk Point-Sioux City Line and administrative and management responsibility for the line, and has the right to grant trackage rights on the line subject to certain BNSF consent.

Although the State has the right to grant trackage rights to Sioux Valley for operations by its third-party operator, BNSF has not consented to the grant of those rights, and the failure to provide this consent is the subject of litigation between the State and BNSF in The Burlington Northern and Santa Fe Railway Company v. State of South Dakota, Case No. 04-470 (S.D. 6<sup>th</sup> Circuit). Sioux Valley recognizes that BNSF consent may have to be obtained (either voluntarily or through litigation) before its third-party trackage rights operations can commence on the Elk Point-Sioux City Line. Nevertheless, inasmuch as the Board's authority for this Notice of Exemption is permissive in nature, the filing of this Notice is appropriate here as a prelude to obtaining any necessary consent.

Pursuant to the agreement between the State of South Dakota and Sioux Valley, the State is granting Sioux Valley overhead trackage rights from milepost 533.4 near Elk Point, South Dakota (also known as milepost 0.0 at East Wye Jct.) to milepost 511.90 in Sioux City, Iowa, including such yard tracks, sidetracks and connecting tracks (existing or to be constructed) as are reasonable and necessary to interchange railcars with BNSF, Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City.

The total distance of the Elk Point-Sioux City Line is 21.5 miles.

The State's agreement with Sioux Valley recognizes that Sioux Valley will utilize a third-party operating carrier to operate the trackage rights, in the same manner that a third-party carrier operates Sioux Valley's leased lines between Beresford and Hawarden, and Canton and Elk Point.

The complete name and address of the entity granting trackage rights to Sioux Valley is the State of South Dakota acting by and through its South Dakota State Railroad Board and the South Dakota Department of Transportation, Office of Railroads, 700 Broadway Avenue, East, Pierre, South Dakota 57501-2586.

Sioux Valley intends to consummate the trackage rights on or after January 5, 2005.

**Map: 49 C.F.R. § 1150.33(f)**

A map showing the Elk Point-Sioux City Line and the surrounding area is attached as Exhibit A to this notice.

**Certificate of Compliance: 49 C.F.R. § 1150.33(g)**

A Certificate of Compliance with the provisions of 49 C.F.R. § 1150.33(g) is attached as Exhibit B to this notice.

**Advance Notice: 49 C.F.R. § 1150.32(e)**

Inasmuch as the projected annual revenue of the Sioux Valley operations will not exceed \$5 million, the advance notice provisions of 49 C.F.R. § 1150.32(e) are not applicable to this transaction.

**Environmental and Historic Preservation Data: 49 C.F.R. § 1105**

Under 49 C.F.R. § 1105.6(c)(2), Sioux Valley's proposed acquisition of trackage rights on the Elk Point-Sioux City Line is exempt from environmental reporting requirements. The proposed acquisition will not result in significant changes in carrier operations, i.e., changes that exceed the thresholds established in 49 C.F.R. § 1105.7(e)(4) or (5).

Under 49 C.F.R. § 1105.8(b)(1), Sioux Valley's proposed acquisition of trackage rights on the Elk Point-Sioux City Line also is exempt from historic preservation reporting requirements. Sioux Valley's acquisition of trackage rights on the Elk Point-Sioux City Line is for the purpose of continued rail operations. Further Surface Transportation Board approval is required to abandon or discontinue any service and there are no plans to dispose of or alter properties subject to Board jurisdiction that are fifty years old or older.

**Caption Summary: 49 C.F.R. § 1150.34**

A caption summary in appropriate form is attached as Exhibit C to this notice.

Respectfully submitted,

By: 

Mr. Russell Hazel  
Sioux Valley Regional Railroad Authority  
29619 Spur Avenue  
Hudson, South Dakota 57034  
(605) 984-2222

**CHAIRMAN  
SIOUX VALLEY REGIONAL  
RAILROAD AUTHORITY**

Dated: December 15, 2004



# EXHIBIT A

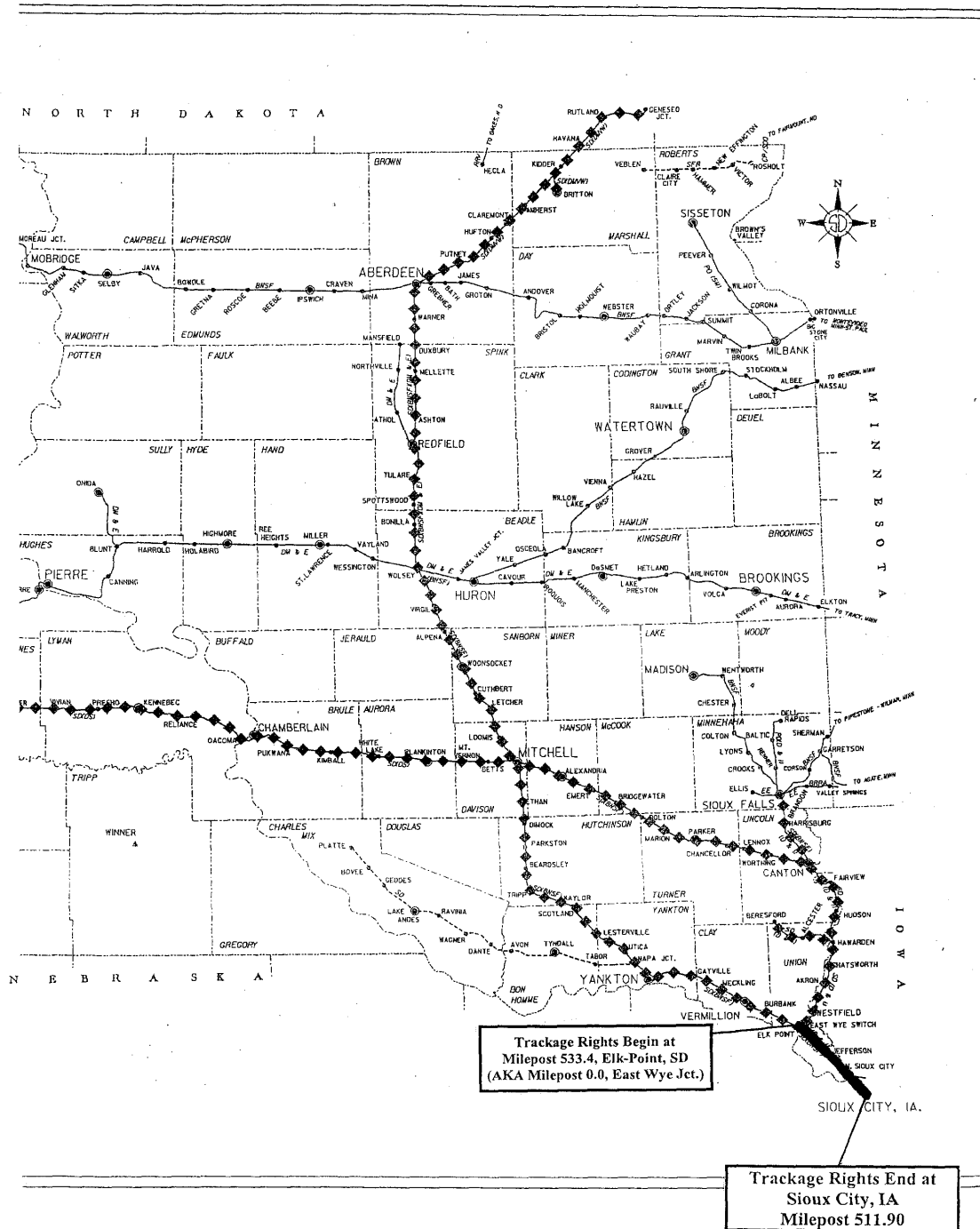
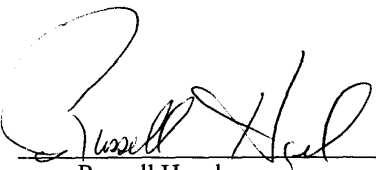


EXHIBIT B

CERTIFICATION

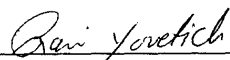
State of South Dakota       )  
  ) ss:  
County of Lincoln            )

Russell Hazel, being duly sworn, hereby certifies that the projected annual rail revenue of Sioux Valley Regional Railroad Authority does not exceed \$5 million and does not exceed that which would qualify it as a Class III carrier under the provisions of 49 C.F.R. § 1201 (1-1).

  
\_\_\_\_\_  
Russell Hazel  
Chairman

SUBSCRIBED AND SWORN TO  
before me this 21 day  
of December, 2004.



  
\_\_\_\_\_  
Notary Public  
My Commission expires: 12-09-2009

**EXHIBIT C**  
**CAPTION SUMMARY**

SURFACE TRANSPORTATION BOARD

**NOTICE OF EXEMPTION**

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FINANCE DOCKET NO. 34646

SIOUX VALLEY REGIONAL RAILROAD AUTHORITY  
-- TRACKAGE RIGHTS EXEMPTION --  
LINES OF THE STATE OF SOUTH DAKOTA.

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Sioux Valley Regional Railroad Authority ("Sioux Valley"), a non-carrier, has filed a Verified Notice of Exemption to acquire from the State of South Dakota (the "State") overhead trackage rights over a line of railroad extending between milepost 533.4 near Elk Point, South Dakota (also known as milepost 0.0 at East Wye Jct.) to milepost 511.90 in Sioux City, Iowa, including such yard tracks, sidetracks and connecting tracks (existing or to be constructed) as are reasonable to interchange railcars with BNSF, Union Pacific Railroad Company, and Canadian National Railway Company at Sioux City. The total distance of the trackage rights to be acquired is approximately 21.5 miles.

This Notice is related to Finance Docket No. 34646 (Sub-No. 1), D&I Railroad Company – Trackage Rights Exemption – State of South Dakota and Sioux Valley Regional Railroad Authority, in which the D&I Railroad Company is filing a Verified Notice of Exemption pursuant to 49 C.F.R. § 1180.2(d)(7) to operate the Elk Point-Sioux City Line trackage rights on behalf of Sioux Valley.

Sioux Valley intends to consummate the trackage rights on or after January 5, 2005. Comments must be filed with the Board and served on:

Mr. Russell Hazel  
c/o Sioux River Ethanol  
29619 Spur Avenue

Hudson, South Dakota 57030

This Notice is filed under 49 C.F.R. § 1150.31. If the Notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. § 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Dated: \_\_\_\_\_

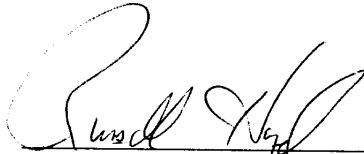
By the Board

Vernon A. Williams  
Secretary


**VERIFICATION**

State of South Dakota       )  
  ) ss:  
County of Lincoln            )

Russell Hazel, being duly sworn, deposes and says that he is Chairman of the Sioux Valley Regional Railroad Authority, that he has read the foregoing Notice of Exemption and knows the facts asserted therein, and that the same are true as stated.

  
\_\_\_\_\_  
Russell Hazel  
Chairman

SUBSCRIBED AND SWORN TO  
before me this 21 day  
of December, 2004.

  
\_\_\_\_\_  
Notary Public  
My Commission expires: 12-09-2009



**CERTIFICATE OF SERVICE**

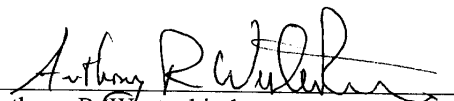
The undersigned hereby certifies that on December 28, 2004 the foregoing **Verified Notice of Exemption of Sioux Valley Regional Railroad Authority Pursuant to 49 C.F.R. § 1150.31** with attached Exhibits was served upon counsel of record by the means indicated below, to wit:

Adrian L. Steel, Jr.  
Mayer, Brown, Rowe & Maw, LLP  
1909 K Street, N.W.  
Washington, DC 20006-1101  
(202) 263-3237

Via Federal Express

Dated: December 28, 2004

By:

  
Anthony R. Westenkirchner